

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2006 JUN 26 P 5:17

SHYANDREA AND MARY
HESTER, et al.,

Plaintiffs,

v.

LOWNDES COUNTY
COMMISSION, et al.

Defendants.

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CIVIL ACTION NO. 2:06cv572

MOTION TO DISMISS DEPUTY SHERIFF JIMMY HARRIS

COMES NOW Jimmy Harris, a Defendant in the above styled cause, and moves this Honorable Court to dismiss the Plaintiffs' Complaint against him pursuant to Rule 12(b)(6), as the Plaintiffs' Complaint, and its component parts, separately and severally fails to state a claim against him upon which relief may be granted as Defendant Jimmy Harris is entitled to absolute immunity from Plaintiff's claims under Federal law, as reasons for so moving, Defendant submits its Memorandum Brief in support of his Motion, and as follows:

1. Deputy Harris, in his official capacity, is entitled to have the § 1983 claims against him dismissed.

a. The Plaintiffs' official capacity claims against Deputy Harris are barred by the Eleventh Amendment to the United States Constitution.

b. Deputy Harris, in his official capacity, does not constitute a "person" for purposes of 42 U.S.C. § 1983.

2. The Plaintiffs' Fifth Amendment claims are due to be dismissed as such claims only apply to the federal government.

3. Deputy Harris, in his individual capacity, is entitled to have the Plaintiffs' § 1983 claims against him dismissed.

a. The Plaintiffs' Complaint fails to meet the Eleventh Circuit's pleading requirement for § 1983 cases involving qualified immunity.

b. Deputy Harris is entitled to qualified immunity on the Plaintiffs' § 1983 claims.

4. Deputy Harris is entitled to have the Plaintiffs' state law claims against him dismissed.

WHEREFORE, PREMISES CONSIDERED, Defendant, Jimmy Harris, requests that this Honorable Court enter an order dismissing all claims against him in this action.

Respectfully submitted this 26 day of June, 2006.


KENDRICK E. WEBB (WEB022)
C. RICHARD HILL, JR. (HIL045)

ATTORNEYS FOR DEFENDANTS LOWNDES
COUNTY, ALABAMA, COMMISSION, AND
JIMMY HARRIS

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing by placing a copy of the same in the United States Mail, postage prepaid, upon:


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Honorable Ruby Jones
Lowndes County Court Clerk
P. O. Box 876
Hayneville, AL 36040

this 26th day of June, 2006.



OF COUNSEL